

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

: MANCHESTER MUNICIPAL EMPLOYEES, LOCAL NO.:
: 298, AMERICAN FEDERATION OF STATE, COUNTY:
: AND MUNICIPAL EMPLOYEES, AFL-CIO :
: :
: and : CASE NO. A-0425:1
: :
: CITY OF MANCHESTER, NEW HAMPSHIRE :
: AND THE TRAFFIC COMMISSION :
: :

77-36

APPEARANCES

Representing the Manchester Municipal Employees, Local No. 298, AFSCME, AFL-CIO:

James J. Barry, Jr., Esquire, Counsel for Local 298
James C. Anderson, President, Council No. 68
Leon J. Morrisette, Chief Steward, Traffic Department
David Broderick, Esquire

Representing the City of Manchester, N. H. and the Traffic Commission:

Wilbur L. Jenkins, Personnel Director, City of Manchester, N. H.
Richard B. Loughlin, Sr., Superintendent, Traffic Department
Joseph Dalton, Supervisor, Traffic Department

BACKGROUND

On July 22, 1977, William J. McDonough, Executive Director, N. H. Public Employees Council No. 68, Manchester, New Hampshire filed with PELRB a complaint of unfair labor practice under RSA 273-A:5 against the City of Manchester, New Hampshire and the Traffic Commission. Charges, based on RSA 273-A:5, 1 (g), (h), and (i), alleged violations by the City for failure to comply with the RSA or any rule adopted under it; a breach of the existing collective bargaining agreement; and making any law or regulation, or adopting any rule relative to the terms and conditions of employment that would invalidate any portion of an agreement entered into by the public employer making or adopting such law, regulation or rule.

The local employee organization submitted in evidence the existing agreement, signed May 5, 1969, and the New Hampshire Supreme Court decision dated November 30, 1976 in which the description of the bargaining unit was clearly defined.

The complaint also emphasized the section of the statute which states, "Nothing in this Chapter shall terminate or modify a bargaining unit, certification of an exclusive representative or collective bargaining agreement in existence on the effective date of this Chapter". Supreme Court Case No. 7540, State Employees Association of New Hampshire, Inc. v. New Hampshire

Public Employee Labor Relations Board, November 9, 1976.

The charges alleged that the City of Manchester and the Traffic Commission had implemented, without good faith negotiations with the Local Union, several new positions in the Traffic Department which directly affected the recognized bargaining unit and which were allegedly managerial or supervisory but in fact were rearrangements of existing duties of unit members.

Also in evidence, the Union submitted copies of the Manchester Code, Division 2, Department of Traffic, Section 14.8 thru 14.11, establishing certain rules and regulations to be followed and outlining the duties of the Superintendent.

On August 2, 1977, PELRB received from Wilbur L. Jenkins, Personnel Director for the City of Manchester, replies to the allegations made against the City and the Traffic Commission.

The City, through its representative, denied the charges of violation of either RSA 273-A:5, or violation of the existing collective bargaining agreement. The City contends that the Union misrepresented the "Recognition" clause by stating that it was the sole and exclusive representative of "all" (emphasis) employees of the Traffic Department. The City stated that in both the 1969 and the 1977 contracts, the recognition clauses referred to the covered employees only as persons actively and regularly engaged in the Department's work and currently enrolled on the regular payroll of the Traffic Department; and, specifically referred to recognition of those employees who are members of the Union (emphasis added) and excepted engineers, executives, temporary help, and part-time help and all management or supervisory employees of the Department who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees for the purpose of collective bargaining. Further, the City stated that by paragraphs of the Traffic Department contract entitled, "Agreement" and "witnesseth", the Union representation was also limited to those employees who "are" members of the Local Union.

PELRB scheduled a hearing on the unfair labor charges for October 7, 1977 to be held in Room 306 of the Legislative Office Building, Concord, New Hampshire.

Mr. Jenkins raised the question of the status of Board Member James C. Anderson's role in the case.

Chairman Edward J. Haseltine informed the parties of interest that Mr. Anderson was disqualified and would not participate in any way.

During the testimony the issue was clearly defined as to whether or not the City of Manchester had a managerial right to create new positions for the betterment of the department.

Certain questions arose at the hearing which necessitated testimony from Superintendent Richard Loughlin who was then hospitalized. The Board recessed and continued the hearing until the appearance of the witness, Mr. Loughlin.

The City objected and was prepared to proceed with witness, Joseph Dalton, Supervisor, however, PELRB did not change its position and continued

the case to a date to be determined after Mr. Loughlin returned to work.

Continuation of the October 7, 1977 hearing was scheduled for November 30, 1977 in the Conference Room of the James Hayes Safety Building, Hazen Drive, Concord, New Hampshire. Due to a conflict, PELRB did not have a quorum present. By mutual agreement of all parties of interest, hearing was rescheduled for 1:00 p.m., December 14, 1977 in the new offices of the Public Employee Labor Relations Board, Pine Inn Plaza, Building 2, 117 Manchester Street, Concord, New Hampshire. In attendance for PELRB were: Chairman Edward J. Haseltine, Board Members Richard H. Cummings and Joseph B. Moriarty. Also in attendance was the Clerk of the Board, Evelyn C. LeBrun.

The question again arose on the role of Board Member James C. Anderson in the case, and Chairman Haseltine explained that Mr. Anderson would not participate in any way as he was a party to the unfair labor charges.

Testimony was obtained from witness Richard Loughlin, Superintendent of the City of Manchester Traffic Department, who explained the various duties of Traffic Maintenance Foreman I and II. The testimony brought out that a plus rate (a higher rate of pay) had been paid to Mr. Anderson during a period when he was performing duties in addition to his regular job, and that said plus rate had been discontinued when the Superintendent positions were created, resulting in his pay being lowered. Evidence also indicated that Mr. Loughlin had been promoted to Superintendent in June, 1975 and that at that time the Traffic Commission determined he would serve a probationary period and that the position held by Mr. Loughlin would not be filled while he was on probation. That process started in 1976 but was not finalized until 1977.

Representative for the City, Mr. Jenkins, stated no positions had been abolished, rather reclassification and upgrading of positions were made. The reorganization resulted in two supervisors and maintenance foreman.

Attorney Barry for the Local Union submitted several exhibits: description of duties of Traffic Maintenance Foreman II, Memorandum of Agreement of negotiated settlement between the City of Manchester, N. H. Aldermanic Negotiating Team and the Local Union, denial of a grievance filed by James Anderson dated July 20, 1977, description and duties of Traffic Maintenance I, the official grievance form filed by Mr. Anderson, letter from Superintendent of Traffic Richard B. Loughlin agreeing that Mr. Anderson had been performing the duties of Traffic Maintenance Foreman II and entitled to the plus rate, letter dated January 6, 1977, and grievance form filed by Mr. Anderson stating the Traffic Maintenance Foreman II position had never been posted, constituting a violation of their Article XIX, Section 5, all of which are part of the record of this case.

The City produced in evidence Manchester Code, Section 18.64, Maintenance of plans outlining the responsibilities of the Personnel Director in regard to maintenance of the classification and compensation plans, including but not limited to the allocation of new or changed positions, determination of proper compensation rates within the provisions, etc.

In further evidence, the City submitted the AAA, award of arbitrator dealing with the Highway Department.

FINDINGS OF FACT AND RULINGS OF LAW

1. Local 298, AFSCME does in fact represent the employees of the Traffic Department, City of Manchester, New Hampshire. The Recognition Clause in the existing agreement states:

SECTION 2. "The Department of Traffic, City of Manchester, New Hampshire, hereby recognizes that the Union is the sole and exclusive representative of all employees of the Department of Traffic who are members of the Union, except the engineers, executives, temporary help and part-time help, and all management or supervisory employees of the Department who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, for the purpose of collective bargaining."

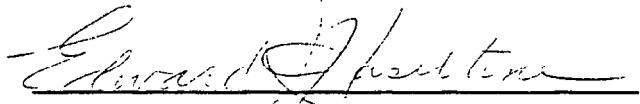
While the specific language of this recognition section might be limited to only those employees who are members of the Union, PELRB finds that this would result in an absurd situation and that this clause includes ALL the employees of the Department of Traffic with the exceptions of specifically noted by title in the recognition clause, as this Board found in the Declaratory Judgment, City of Concord, et. al., Decision A-0417:2, September 13, 1977.

2. During the life of a negotiated agreement, the parties have an obligation to observe the terms of the agreement, including covered employees and their positions. Changes therein and the effects of those changes must be negotiated before the changes are made to give both parties to the agreement input on changes affecting covered personnel.
3. The City of Manchester has in fact breached a collective bargaining agreement unilaterally, without good faith negotiations, with the exclusive representative of the employees of the Traffic Department, by changing the unit agreed upon.
4. PELRB finds that altering the composition of the bargaining unit is a subject of negotiations between the parties.

ORDER

- A) The City of Manchester, New Hampshire and the Traffic Commission are found guilty of Unfair Labor Practices under RSA 273-A:5, 1(g) by unilaterally changing the composition of the bargaining unit without good faith negotiations under the guise of changing the managerial structure of the employer.

- B) The City of Manchester, New Hampshire and the Traffic Commission are hereby ordered to rescind the changes made pending negotiations with Local 298 of the American Federation of State, County and Municipal Employees, AFL-CIO concerning such changes; to commence such negotiations within ten (10) days of this order; and, to report progress to the Public Employee Labor Relations Board after each negotiating session.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 29th day of December, 1977.

Unanimous vote of the Board. Chairman Edward J. Haseltine, Members Richard H. Cummings and Joseph B. Moriarty voting. It is noted that Board Member James C. Anderson did not participate in any of the discussions or voting on this issue.